Supreme Court, U.S.
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No. 84-931

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

DAVID K. GUENTHER,

Petitioner,

vs.

MARK HOLMGREEN and
CITY OF BLACK RIVER FALLS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF RESPONDENT MARK HOLMGREEN

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REASONS FOR DENYING THE WRIT

Review of this case should not be granted because the Court of Appeals decision does not conflict with decision from other courts of appeals, the Court of Appeals correctly applied existing law to decide the case and the unique facts of this case are unlikely to recur.

I. THE COURT OF APPEALS DECISION IS NOT IN CONFLICT WITH DECISIONS FROM THE OTHER CIRCUITS.

The Court of Appeals decision does not conflict with decisions from other courts of appeals. The Petitioner suggests that because rulings in McCarthy v. Kleindienst, 741 F. 2d 1406

(D.C. Cir. 1984) and Krohn v. United States, 742 F. 2d 24 (1st Cir. 1984) differ from the Court of Appeals decision on the collateral estoppel issue, a conflict exists between the circuits. Petitioner's argument that a doctrinal difference exists requiring this Court's clarification ignores the disparate factual and procedural underpinnings of McCarthy and Krohn, and the instant case.

The court's estoppel decision in McCarthy is buried in a footnote and provides no factual or legal exposition for its result. Unlike the Court of Appeals decision in the instant case, which thematically developed the legal and factual background upon which its

estoppel decision was based, McCarthy regards the issue as a digression. No discussion of the significant decisions of this Court on the estoppel issue is found in McCarthy. McCarthy does not embrace a principle contrary to the Court of Appeals decision, for it makes no doctrinal pronouncement whatsoever on the estoppel issue.

In Krohn, contrary to Petitioner's assertion, the Court of Appeals was not convinced that the trial court made a finding of probable cause to preclude further litigation of that issue. 742 F. 2d at 31. The question of probable cause to arrest was only incidentally referred to by the lower trial court in ruling upon Krohn's motion for a speedy

trial. The Court of Appeals cited three reasons for rejecting Krohn's estoppel argument: the Court of Appeals was not convinced that the trial court actually found probable cause for Krohn's arrest; a probable cause finding was not essential to the trial court's decision on Krohn's speedy trial motion; and, the trial court's decision was never appealed.

Unlike Krohn, the Court of Appeals in the instant case did rule probable cause was found by the state court. The Court of Appeals also found that the issue of Holmgreen's veracity, integrity and good faith was actually determined in the state court proceedings, and was necessary to that court's probable cause finding.

The Petitioner strains to demonstrate a conflict between the circuits. In both McCarthy and Krohn, the issue of collateral estoppel is only superficially discussed, and in both instances in a context factually and procedurally distinguishable from the instant case. In neither McCarthy nor Krohn does the court's decision ultimately hinge upon its determination of a collateral estoppel issue, and in neither case does the court discuss the collateral estoppel issue within the context of case law determined by this Court. There is nothing in the reasoning and discussion of either McCarthy or Krohn to intimate that those respective courts would analyze the instant case differently than did the

Seventh Circuit. There is also no indication that on the facts of the instant case the District of Columbia Court of Appeals or the First Circuit Court of Appeals would reach a result different from the Seventh Circuit. Because there is no conflict in principle among the courts of appeals on the collateral estoppel issue, consideration of the issue by this Court is unnecessary.

II. THE COURT OF APPEALS CORRECTLY APPLIED ESTABLISHED LAW IN DECIDING THE ISSUE OF COLLATERAL ESTOPPEL.

In deciding the issue of collateral estoppel, the Court of Appeals followed the guidelines established in Allen v. McCurry, 449 U.S. 90 (1980) and refined

in Haring v. Prosise, 103 S.Ct. 2368 (1983) and Migra v. Warren City School District Board of Education, 104 S.Ct. 892 (1984). The Court's decision is in accord with these cases and correctly applied the facts of this case to the guidelines so established.

Despite Petitioner's statement to the contrary, the Court of Appeals did not deviate from the law as established in Allen and the later cases. As required in cases involving collateral estoppel, the Court applied and considered Wisconsin collateral estoppel law and so stated in its opinion. (Pet.A.28) Further, the Court went on to correctly determine that the integrity of the evidence and specifically Holmgreen's credibility was

the "linchpin" of both Petitioner's Fourth Amendment claim in this case and in his attack on probable cause in state court. (Pet.A.29-30) The Court spent considerable time in its opinion describing the nature, extent and fairness of the state court hearing invited by Petitioner (Pet.A.29-38) and correctly determined that Petitioner was given a full and fair opportunity to litigate both the sufficiency and the integrity of the evidence regarding the issue of probable cause. The Court's analysis was as required in Allen. Review by this Court is therefore unnecessary to correct any misinterpretation or incorrect application of established law by the Court of Appeals.

III. THE UNIQUE FACTS OF THIS CASE ARE UNLIKELY TO RECUR.

The issue decided by the Court of Appeals resulted from a fact situation so narrow that it is unlikely to recur. Petitioner invited litigation of the probable cause issue in state court and made integrity of the evidence and the credibility of Holmgreen the focus of his attack on probable cause. Petitioner was given a full-blown advisorial evidentiary hearing in state court on precisely the same issue he now seeks to relitigate in federal court. It seems unlikely that such a set of circumstances will be repeated with great frequency, making review by this Court unwarranted.

CONCLUSION

For the above reasons, Respondent, Mark Holmgreen, respectfully submits that this is not an appropriate case for review and Appellant's Petition for a Writ of Certiorari should be denied.

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